



266128

KENNETH J. MURPHY
CLERK

95 DEC 18 PM 3:22

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUSJudge HMag. Judge TKDocketed PM
12-19-95IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORMET PRIMARY ALUMINUM
CORPORATION,

Defendant.

CIVIL ACTION NO.

C2-95-947

011528

CONSENT DECREE

TRANSFER NOT NECESSARY

DATE 1-10-96 SEC. 319.202 COMPLETED WITH
JAMES N. NEUHART, AUDITOR, MONROE COUNTY, OHIO
BY VIDE FEE 0 MILL 0Volume 18 Page 756

| | |
|-------------------------------------------------------------------------------------------------------------------|--------------|
| I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN MY OFFICE ON <u>Dec 12, 1995</u> | |
| KENNETH J. MURPHY, CLERK | |
| BY: <u>Pelma Welby</u> | Deputy Clerk |
| DATE: <u>Jan 4, 1996</u> | |

MONROE CO. RECORD OF Official Records
VOL. 18 PAGE 756
RECEIVED
96 JAN 10 PM 2:00
RECORDED January 10, 1996
MARITHA LOUISE REID
RECORDER FEE \$882.00

Appendix B, Statement of Work. Table 1 and Figure 1 are missing.



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section

ENVIRONMENT & NATURAL RESOURCES DIVISION
ENVIRONMENTAL ENFORCEMENT SECTION
1425 NEW YORK AVE. NW
WASHINGTON, D.C. 20005
FAX # (202) 616-6584

IF THERE ARE PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL

(NAME AND TELEPHONE NUMBER)

TO: ELIZABETH MURPHY

FROM: LESLIE LEAVER

NUMBER OF PAGES (INCLUDING COVER SHEET): 3

DATE: 1/14/96 TELEFAX #: 312/886 47160

CONFIRMATION #: _____

MESSAGE: Signed by the Judge on 12/15 ; filed by the Clerk on 12/18

| | |
|------------|----------|
| Judge | H |
| Mag. Judge | TK |
| Docketed | Phu |
| | 12-14-93 |

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

FILED
KENNETH J. MURPHY
CLERK

85 DEC 18 PM 3:22

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST 177 COLUMBUS

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORMET PRIMARY ALUMINUM
CORPORATION,

Defendant.

CIVIL ACTION NO.

C2-95-947

CONSENT DECREE

4

service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS 15th DAY OF DECEMBER, 1975


United States District Judge

CONSENT DECREE

TABLE OF CONTENTS

MODEL CERCLA RD/RA CONSENT DECREE

| | | |
|--------|-------------------------------------------------------|-----|
| I. | <u>BACKGROUND</u> | 1 |
| II. | <u>JURISDICTION</u> | 4 |
| III. | <u>PARTIES BOUND</u> | 4 |
| IV. | <u>DEFINITIONS</u> | 5 |
| V. | <u>GENERAL PROVISIONS</u> | 10 |
| VI. | <u>PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS</u> | 13 |
| VII. | <u>ADDITIONAL RESPONSE ACTIONS</u> | 21 |
| VIII. | <u>REMEDY REVIEW</u> | 23 |
| IX. | <u>QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS</u> | 23- |
| X. | <u>ACCESS</u> | 26 |
| XI. | <u>REPORTING REQUIREMENTS</u> | 28 |
| XII. | <u>EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS</u> | 30 |
| XIII. | <u>PROJECT COORDINATORS</u> | 33 |
| XIV. | <u>ASSURANCE OF ABILITY TO COMPLETE WORK</u> | 34 |
| XV. | <u>CERTIFICATION OF COMPLETION</u> | 38 |
| XVI. | <u>EMERGENCY RESPONSE</u> | 42 |
| XVII. | <u>REIMBURSEMENT OF RESPONSE COSTS</u> | 43 |
| XVIII. | <u>INDEMNIFICATION AND INSURANCE</u> | 46 |
| XIX. | <u>FORCE MAJEURE</u> | 49 |
| XX. | <u>DISPUTE RESOLUTION</u> | 52 |
| XXI. | <u>STIPULATED PENALTIES</u> | 56 |
| XXII. | <u>COVENANTS NOT TO SUE BY PLAINTIFFS</u> | 61 |
| XXIII. | <u>COVENANTS BY SETTLING DEFENDANTS</u> | 65 |
| XXIV. | <u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u> | 66 |

| | | |
|---------|---------------------------------------------------|----|
| XXV. | <u>ACCESS TO INFORMATION</u> | 68 |
| XXVI. | <u>RETENTION OF RECORDS</u> | 69 |
| XXVII. | <u>NOTICES AND SUBMISSIONS</u> | 71 |
| XXVIII. | <u>EFFECTIVE DATE</u> | 72 |
| XXIX. | <u>RETENTION OF JURISDICTION</u> | 73 |
| XXX. | <u>APPENDICES</u> | 73 |
| XXXI. | <u>COMMUNITY RELATIONS</u> | 73 |
| XXXII. | <u>MODIFICATION</u> | 74 |
| XXXIII. | <u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> | 74 |
| XXXIV. | <u>SIGNATORIES/SERVICE</u> | 75 |

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORMET PRIMARY ALUMINUM
CORPORATION,

Defendant.

CIVIL ACTION NO.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Ormet Corporation Superfund Site in Hannibal, Ohio, together with accrued interest; and (2) performance of studies and response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Ohio

(the "State") on February 14, 1995 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Fish and Wildlife Service and the Ohio Environmental Protection Agency on March 24, 1994 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The Defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 28, 1985, 50 Fed. Reg. 37950, at seq.;

G. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, the Settling Defendant commenced in February 1988, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430;

H. The Settling Defendant completed a Remedial Investigation ("RI") Report in December 1992 and the Settling Defendant completed a Feasibility Study ("FS") Report in December 1993;

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on April 11, 1994, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 12, 1994, on which the State had a reasonable opportunity to review and comment. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA, EPA believes that the Work as defined below will be properly and promptly conducted by the Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendant shall constitute a response action taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and its heirs, successors and assigns. Except as otherwise provided herein, any change in

ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are

used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"OEPA" shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to

Sections VII, VIII, X (including, but not limited to, attorneys fees and the amount of just compensation), XVI, and Paragraph 83 of Section XXII. Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between December 31, 1994 and the effective date of this Consent Decree.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendant.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United States incurred and paid with regard to the Site prior to December 31, 1994.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in the ROD or Section II of the SOW.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 12, 1994, by the Regional Administrator, EPA Region V, and all attachments thereto.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendant to implement the final plans and specifications submitted by the Settling Defendant pursuant to the Remedial Design Work Plan and approved by EPA.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendant to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document submitted by the Settling Defendant pursuant to Paragraph 11.a of this Consent Decree and described more fully in Paragraph 11.b.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendant" shall mean Ormet Primary Aluminum Corporation.

"Site" shall mean the Superfund site portions of the Ormet Primary Aluminum Corporation property encompassing a stretch of land approximately 2.5 miles long and up to 0.5 miles wide, located along the west bank of the Ohio River, approximately 35 miles south of Wheeling, West Virginia, about 3 miles upriver from Hannibal in Monroe County, Ohio and specifically described and mapped in Appendix C.

"State" shall mean the State of Ohio.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous waste" under ORC 3734.01(J).

"Work" shall mean all activities Settling Defendant is required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendant and to reimburse response costs of the Plaintiff.

6. Commitments by Settling Defendant

a. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendant shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and §300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendant may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Settling Defendant shall record a certified copy of this Consent Decree with the Recorder's Office or Registry of Deeds or other appropriate office, Monroe County, State of Ohio. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that portions of the property are subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of Settling Defendant with respect to the provision of access under Section X (Access) and the implementation of institutional controls under Appendix D shall be binding upon Settling Defendant and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, Settling Defendant shall record at the Recorder's Office or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property a notice of obligation to provide access under Section X (Access) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. Except as otherwise provided herein, in the event of any such conveyance, the Settling Defendant's obligations under this Consent Decree, including its obligations to provide or secure access pursuant to Section X, shall continue to be met by the Settling Defendant. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. The conveyance

of an interest in property that includes, or is a portion of, the Site shall not release or otherwise affect the liability of the Settling Defendant to comply with the Consent Decree unless the Successor in Title: 1) agrees to assume the obligations under this Consent Decree; 2) obtains the approval of the United States for a modification to the Consent Decree substituting the Successor in Title for the Defendant; and 3) submits to the jurisdiction of this Court and the Court approves a modification to the Consent Decree substituting the Successor in Title for the Defendant for purposes of this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Additional Response Actions), VIII (Remedy Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 10 days after the lodging of this Consent Decree, Settling Defendant shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendant proposes to change a Supervising Contractor, Settling Defendant shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new

Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendant may seek relief under the provisions of Section XIX (Force Majeure) hereof.

11. Remedial Design.

a. Within sixty (60) days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendant shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD in accordance with the SOW and,

upon its approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. Within sixty (60) days after EPA's issuance of an authorization to proceed, the Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW and in accordance with the schedule contained in Section V of the SOW, including, but not limited to:

- (1) pre-design studies, as set forth in Section II(3) of the SOW;
- (2) a pre-design sampling and analysis plan ("SAP") (including a pre-design Quality Assurance Project Plan (pre-design QAPP));
- (3) plans and schedules for delineation of the extent of PCB contamination in soils located between the Construction Material Scrap Dump (CMSD) and the 004 outfall, and delineation of PCB contamination in the backwater area sediments, as set forth in Section II(3)(A) of the SOW;
- (4) plans for estimation of the contaminant mass-in-place for the groundwater contaminant plume, as set forth in Section II(3)(C) of the SOW;
- (5) plans and schedules for implementing a treatability study for the CMSD seeps and for the Former Spent Potliner Storage Area (FSPSA) soils.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field

activities to EPA and the State, Settling Defendant shall implement the Remedial Design Work Plan. The Settling Defendant shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendant shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design assumptions and parameters; (2) results of treatability studies for the CMSD seeps and FSPSA soils; (3) results of additional field sampling and pre-design work, set forth in Section II(3) of the SOW; (4) Proposed cleanup verification methods, including compliance with Performance Standards including Applicable or Relevant and Appropriate Requirements (ARARs); (5) project delivery strategy; (6) preliminary plans, drawings and sketches; (7) required specifications in outline form; (8) Proposed siting locations of processes, and construction activity; (9) expected long term monitoring and operation requirements; (10) real estate easement and permit requirements; and (11) a preliminary construction schedule.

e. The intermediate design submittal shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this

review. The intermediate design submittal shall include, at a minimum: (1) a Draft Performance Standard Verification Plan; (2) a Draft Construction Quality Assurance Project Plan (CQAPP); (3) the Draft QAPP, Draft Health and Safety Plan (including Contingency Plan), and Draft Field Sampling Plan (directed at measuring progress towards meeting Performance Standards). The CQAPP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official ("QA Official"), independent of the Remedial Action Contractor, to conduct a quality assurance program during the construction phase of the project.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) Draft Operation and Maintenance Plan (O&M Plan); (2) Final Construction Quality Assurance Project Plan (CQAPP); (3) Final Field Sampling Plan; (4) Final QAPP; (5) Final Health and Safety Plan (including Contingency Plan); (6) a Capital and Operation and Maintenance Cost Estimate; (7) Final Performance Standard Verification Plan; and (8) the Final Project Schedule for the construction and implementation of the Remedial Action..

12. Remedial Action.

The Settling Defendant shall implement the Remedial Action as detailed in the approved Final Design. The following activities shall be completed in implementing the Remedial Action: (1) Pre-Construction Inspection and Testing; (2) Pre-Final Inspection; (3) Final Inspection; (4) Construction Completion

Report; and (5) Remedial Action Completion Report. Activities performed in implementation of the Remedial Action shall be conducted in accordance with the schedule in Section V of the SOW. The Settling Defendant shall prepare the Construction Completion and Completion of Remedial Action Reports in accordance with Section XV (Completion of Work) of this Consent Decree.

13. a. The Work performed by the Settling Defendant pursuant to this Consent Decree shall include the obligation to achieve the Performance Standards.

b. Technical Impracticability Waiver for CMSD Closure Requirements.

i. Settling Defendant may petition EPA to waive compliance with the CMSD closure requirements contained in the ROD solely for that portion of the CMSD that is adjacent to the Ohio River. Settling Defendant must demonstrate, pursuant to Section 121(d)(4) of CERCLA, 42 U.S.C. § 9621(d)(4), that achievement of the closure requirements for that portion of the CMSD is technically impracticable from an engineering perspective and that Settling Defendant's proposed alternative will achieve a standard of performance equivalent to that of the CMSD cover requirements in the ROD. Settling Defendant's petition shall include: (a) an identification of each closure requirement for which a waiver is sought; (b) a detailed justification setting forth the technical basis for the claim that it is technically impracticable from an engineering perspective to achieve each such closure requirement; (c) a proposed alternative performance standard which will achieve

a standard of performance equivalent to that of the CMSD requirements in the ROD; and (d) a demonstration that the Work and/or any alternative cleanup standards at the Site, together with any additional response actions taken or proposed to be taken by Settling Defendant in the petition, will attain a degree of control of further releases which will assure protection of human health and the environment. Settling Defendant shall also submit a copy of their petition and supporting information to Ohio EPA for review and comment.

ii. Determination. Based on its review of the petition and the supporting documentation submitted by Settling Defendant pursuant to Subparagraph 13.b.i. above and other relevant information, and after notice and an opportunity for the State to review and comment on any proposed waiver under this Paragraph, EPA shall determine whether to waive compliance with any of the closure requirements contained in the ROD and shall identify the closure alternative and/or any other response actions that shall be established. The determination shall be made in accordance with all applicable laws and regulations in effect at the time of the petition. Any alternative closure requirement and/or any additional response actions selected by EPA pursuant to this Paragraph shall meet the requirements of CERCLA and the NCP, including protection of human health and the environment. If EPA grants any petition pursuant to this Paragraph, the SOW shall be modified in accordance with Section XXXII of this Consent Decree to include any alternative closure requirement established.

iii. Review. Settling Defendant may challenge EPA's determination under Subparagraph 13.b.ii. above in accordance with the Dispute Resolution provisions in Paragraphs 62 - 67 of this Consent Decree. EPA's determination shall be treated as one regarding the selection and adequacy of a response action within the meaning of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j).

c. Periodic Review. Any technical impracticability waiver granted pursuant to this Paragraph shall be subject to the provisions of Section VIII of this Consent Decree (Remedy Review) and Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

d. State Involvement. Nothing in this Paragraph shall affect the State's rights under Section 121(f) of CERCLA, 42 U.S.C. § 9621(f).

14. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Remedial Design Work Plan constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards. Settling Defendant's compliance with the work requirements shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

15. Settling Defendant shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the

EPA Project Coordinator of such shipment of Waste Material.

However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Materials are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendant following the award of the contract for Remedial Action construction. The Settling Defendant shall provide the information required by Paragraph 15.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. ADDITIONAL RESPONSE ACTIONS

16. In the event that EPA or the Settling Defendant proposes that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, written notification of such additional response actions shall be provided to the Project Coordinator for the other party. EPA

shall review any proposal by the Settling Defendant to determine whether any additional response action is necessary. After an opportunity for review and comment by the State on any proposal, EPA shall determine what additional response action is necessary and appropriate. If required by Sections 113(k)(2), or 117 of CERCLA, the Settling Defendant and the public will be provided with an opportunity to comment on any additional response actions proposed and an opportunity to submit written comments for the record during the public comment period. Notice of the selection shall be served on the Settling Defendant and the State.

17. Within thirty (30) days of receipt of notice from EPA that additional response actions are necessary, Settling Defendant shall submit to EPA and the State for EPA approval, after reasonable opportunity for review and comment by the State, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 11 and 12. Upon approval of the plan pursuant to Section XII (EPA Approval of Plans and Other Submissions), Settling Defendant shall implement the plan for additional response actions in accordance with the schedule contained therein.

18. Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Paragraphs 62-67 of this Consent Decree.

VIII. REMEDY REVIEW

19. a. Periodic Review. Settling Defendant shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations. Copies of the studies and any reports, proposals, documents or items required by EPA shall be submitted by the Settling Defendant to EPA for approval under Section XII and to the State for review and comment.

b. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

20. Opportunity to Comment. The Settling Defendant and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

21. Settling Defendant agrees to admit liability in the event that the United States institutes an action for further relief based on the reservations set forth in Paragraphs 79, 80 or 82 of the Covenant Not To Sue.

IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

22. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories

they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendant shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

23. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendant shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendant's implementation of the Work.

24. Settling Defendant shall submit to EPA and the State two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

X. ACCESS

26. Commencing upon the date of lodging of this Consent Decree, the Settling Defendant agrees to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendant, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXV; and

g. Assessing Settling Defendant's compliance with this Consent Decree.

27. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendant, Settling Defendant shall use best efforts to secure from such persons access for Settling Defendant, as well as for the United States and its representatives, including, but not limited to, its contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendant in writing that additional access beyond that previously secured is necessary, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Settling Defendant has taken to attempt to obtain access. In such event, the United States may, as it deems appropriate, assist Settling Defendant in obtaining access. Settling Defendant shall reimburse the United States, in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

28. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights,

including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XI. REPORTING REQUIREMENTS

29. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and the State two (2) copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling

Defendant shall submit these progress reports to EPA and the State by the fifteenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendant pursuant to Paragraph 48.b of Section XV (Certification of Completion). If requested by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.

30. The Settling Defendant shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

31. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region V, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

32. Within 20 days of the onset of such an event, Settling Defendant shall furnish to Plaintiff a written report, signed by the Settling Defendant's Project Coordinator, setting forth the

events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto. Settling Defendants shall simultaneously submit a copy of the reports to the State.

33. Settling Defendant shall submit two (2) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit two (2) copies of all such plans, reports and data to the State.

34. All reports and other documents submitted by Settling Defendant to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendant.

XII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

35. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modify the submission; or (e) any combination of the above.

However, EPA shall not modify a submission without first providing

Settling Defendant at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

36. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 35(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 35(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXI (Stipulated Penalties).

37. a. Upon receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendant shall, within 30 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 38 and 39.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

38. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as amended or developed by EPA, subject only to their right to invoke the procedures set forth in Section XX (Dispute Resolution).

39. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendant invokes the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall

accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI.

40. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XIII. PROJECT COORDINATORS

41. Within 20 days of lodging this Consent Decree, Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other party at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be an attorney for the Settling Defendant in this matter. He or she may assign other representatives, including subcontractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

42. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

43. Within 30 days of entry of this Consent Decree, Settling Defendant shall establish and maintain financial security in the amount of \$8,238,145.00 in one or more of the following forms:

- (a) A surety bond guaranteeing performance of the Work;
- (b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;
- (c) A trust fund;
- (d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated

corporations that have a substantial business relationship with the Settling Defendant;

(e) A demonstration that the Settling Defendant satisfies the requirements of 40 C.F.R. Part 264.143(f); or

(f) In the event that Settling Defendant is unable to meet the requirements of 40 C.F.R. Part 264.143(f)(1), Settling Defendant may, subject to EPA's approval and in lieu of using an alternative mechanism, establish the following accounts for purposes of financial assurance of ability to complete the Work:

i. Place in an interest-bearing account to be specifically reserved for purposes of the obligations undertaken under this Consent Decree (hereinafter referred to as the Construction Account or "CA"), cash equal to 100% of the remaining capital to be expended for Remedial Design and Remedial Action. The CA shall be established and used solely for the purposes of the construction activities associated with the Remedial Design and Remedial Action as set forth in the ROD and SOW. Payment out of the CA shall be made at the direction of the Settling Defendant, subject to approval by EPA. Any funds remaining in the CA at the end of construction shall be refunded to Settling Defendant.

ii. Place in a separate interest-bearing account the amount of \$898,668.00, which is an estimate of two years Operation & Maintenance expense (hereinafter the "O&M Account"). The O&M Account shall be used solely to continue the effective operation and oversight of all systems put into place during the Remedial Action in the event that EPA determines that Settling Defendant is

in default of its obligations to perform the Work under this Consent Decree. In the event of Settling Defendant's default of its obligations to perform the Work under this Consent Decree, EPA shall have complete control over payments out of the O&M Account.

iii. Should Settling Defendant be unable to satisfy the requirements of 40 C.F.R. § 264.143(f)(1)(i) for two consecutive years, then Settling Defendant shall place an amount equal to 100% of the remaining O&M costs, as determined by EPA, in a trust fund ("the O&M Trust Fund") to be used solely to continue the effective operation and oversight of all systems put into place during the Remedial Action in the event that EPA determines that Settling Defendant is in default of its obligations to perform the Work under this Consent Decree. In the event of Settling Defendant's default of its obligations to perform the Work under this Consent Decree, EPA shall have complete control over payments out of the O&M Trust Fund.

iv. The O&M Account under subparagraph ii. and the O&M Trust Fund under subparagraph iii. shall revert to the Settling Defendant upon either the Settling Defendant's election to establish financial assurance using one of the other mechanisms in this Paragraph, or the Certification of Completion of the Work as defined under Section XV (Certification of Completion) of this Consent Decree, once EPA determines that no outstanding response costs are owed to EPA under this Consent Decree.

44. If the Settling Defendant seeks to demonstrate the ability to complete the Work through a guarantee by a third party

pursuant to Paragraph 43(d) of this Consent Decree, Settling Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendant seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 43(d) or (e), it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 43 of this Consent Decree. Settling Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

45. If Settling Defendant can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 43 above after entry of this Consent Decree, Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendant shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by

EPA. In the event of a dispute, Settling Defendant may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

46. Settling Defendant may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendant may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XV. CERTIFICATION OF COMPLETION

47. Completion of the Remedial Action

a. Within 60 days after the Final Inspection described in Section III of the SOW occurs, Settling Defendant shall submit a Construction Completion Report for EPA approval, pursuant to Section XII (EPA Approval of Plans and Other Submissions). In the report, a registered professional engineer and the Settling Defendant's Project Coordinator shall state that the Remedial Action construction has been completed in accordance with the design and specifications. The written report shall include as-built drawings signed and stamped by a registered professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or the Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. Within 90 days after Settling Defendant concludes that the Remedial Action has been fully performed and all Performance Standards have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-certification inspection, the Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall submit a written Completion of Remedial Action Report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of this Consent Decree. The report shall contain all sampling and analysis required in the SOW in order to demonstrate that Performance Standards have been achieved. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a

schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

c. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendant's obligations under this Consent Decree.

48. Completion of the Work

a. Within 90 days after Settling Defendant concludes that all phases of the Work (including O & M), have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-certification inspection, the Settling

Defendant still believes that the Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendant in writing.

XVI. EMERGENCY RESPONSE

49. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 50, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA Emergency Response Unit, Region V. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA

all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

50. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS

51. Within 30 days of the effective date of this Consent Decree, Settling Defendant shall:

a. Pay to the United States \$128,070.73 in full satisfaction of Past Response Costs as well as all costs incurred by the U.S. Department of Justice through July 31, 1995, by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the U.S.A.O. file number _____, the EPA region and Site/Spill ID number 051Z, and DOJ case number 90-11-3-1423. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendant upon execution of the Consent Decree. Payments by EFT must be received at the U.S. D.O.J. lockbox bank by 11:00 A.M. (Eastern Time) to be credited on that day.

52. Settling Defendant shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States will send Settling Defendant a bill requiring payment that includes

an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, DOJ and their contractors on an annual basis. Additionally, EPA will provide to Settling Defendant contractor invoices and progress reports. Settling Defendant shall make all payments within 30 days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 53. The Settling Defendant shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA region and Site/Spill ID number 0512, and DOJ case number 90-11-3-1423. The Settling Defendant shall forward the certified check(s) to U.S. EPA Region V, Attention: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions).

53. Settling Defendant may contest payment of any Future Response Costs under Paragraph 52 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States in the

manner described in Paragraph 52. Simultaneously, the Settling Defendant shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of Ohio and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendant shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 52. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 52; Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be

the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

54. In the event that the payments required by Paragraph 51 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 52 are not made within 30 days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Settling Defendant's receipt of the bill. Interest shall accrue at the rate specified through the date of the Settling Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Section. Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 52.

XVIII. INDEMNIFICATION AND INSURANCE

55. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents,

employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States.

56. Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to

the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

57. No later than 15 days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain [until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 47.c of Section XV (Certification of Completion)] comprehensive general liability insurance with limits of at least \$15 million dollars and automobile insurance with limits of \$1 million dollars for bodily injury and property damage per accident naming as additional insured the United States. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and, if requested by EPA, copies of said policies. Settling Defendant shall maintain such insurance and shall resubmit

such certificates and policies upon request by EPA. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

58. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant or of any entity controlled by Settling Defendant, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

59. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or

not caused by a force majeure event, the Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region V, within 48 hours of when Settling Defendant first knew or should have known that the event might cause a delay. Within 5 days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event. Settling Defendant shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

60. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of

the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

61. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 58 and 59, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

62. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

63. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

64. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position

shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under paragraph 65 or 66.

b. Within fourteen (14) days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 65 or 66. Within seven (7) days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 65 or 66, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 65 or 66.

65. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness

of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region V, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 65.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 65.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 65.b. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendant with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly

implementation of this Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraphs 65.a.

66. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 64, the Director of the Waste Management Division, EPA Region V, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendant unless, within 10 days of receipt of the decision, the Settling Defendant files with the Court and serves on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

67. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 75. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

68. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 69 and 70 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved

by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

69. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|------------------------------------------|--------------------------------|
| \$1,000 | 1 - 30 Days |
| \$2,000 | 31 - 60 Days |
| \$5,000 | Over 60 Days |

b.

i. Failure to timely comply with any notice provisions of this Consent Decree.

ii. Failure to timely complete any of the following elements of the Remedial Design:

Draft RD Work Plan
 30% (Preliminary) Design
 60% (Intermediate) Design
 95% (Prefinal) Design
 100% (Final) Design.

iii. Failure to timely complete any of the major milestones of the Remedial Action in accordance with the approved Final Project Schedule and Section III Task 2.C. of the SOW.

iv. Failure to timely comply with any other requirements of this Consent Decree, except those addressed in Paragraph 70, below.

70. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Section XI of this Consent Decree and Section V of the SOW.

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|------------------------------------------|--------------------------------|
| \$150 | Days 1 - 30 |
| \$300 | Days 31 - 60 |
| \$500 | Over 60 Days |

71. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XII (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notified Settling Defendant of the deficiency; (2) with respect to a decision by the Director of the Waste Management Division, EPA Region V, under Paragraph 65.b. or 66.a. of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission

regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

72. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a violation.

73. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, and shall reference the EPA Region and Site/Spill ID Number 051Z, and DOJ Case Number 90-11-3-1423, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

74. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

75. Penalties shall continue to accrue as provided in Paragraph 71 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

76.a. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect

the penalties, as well as interest. Settling Defendant shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 73 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

77. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

78. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 79, 80, and 82 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future

liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 51 of Section XVII (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 47.c of Section XV (Certification of Completion). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

79. United States' Pre-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to certification of completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and, these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

80. United States' Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to certification of completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to the EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part, after the certification of completion,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

81. For purposes of Paragraph 79, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 80, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree

prior to Certification of Completion of the Remedial Action. Should the land use at the Site, or on properties adjoining the Site, ever change from current use, which is commercial, industrial or undeveloped, to residential use, such information will be considered conditions or information previously unknown to EPA for purposes of paragraphs 79 and 80.

82. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 78. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) liability for assessment costs that have been or may be incurred by U.S. Department of Interior;

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

(7) liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs.

83. In the event EPA determines that Settling Defendant has failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that the Settling Defendant failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XVII (Reimbursement of Response Costs).

84. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY SETTLING DEFENDANT

85. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections

106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. However, the Settling Defendant reserves, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendant's plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

86. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

87. With regard to claims for contribution against Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendant is entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

88. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

89. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendant shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

90. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been

brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiffs).

XXV. ACCESS TO INFORMATION

91. Settling Defendant shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

92.a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential

under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

93. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVI. RETENTION OF RECORDS

94. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 48.b of Section XV (Certification of Completion of the Work), Settling Defendant shall

preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 48.b of Section XV (Certification of Completion), Settling Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

95. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no

documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

96. Settling Defendant hereby certifies that to the best of its knowledge it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXVII. NOTICES AND SUBMISSIONS

97. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
 Environment and Natural Resources Division
 U.S. Department of Justice
 DJ# 90-11-3-1423
 P.O. Box 7611
 Washington, D.C. 20044-7611

and

Director, Waste Management Division
 United States Environmental Protection Agency
 Region V
 77 West Jackson Blvd.
 Chicago, IL 60604-3590

Jennifer L. Wendel
 EPA Project Coordinator
 United States Environmental Protection Agency
 Region V
 77 West Jackson Blvd., HSRM-6J

As to the Settling Defendant:

John Reggi
 Ormet Primary Aluminum Corporation's Project Coordinator
 Ormet Primary Aluminum Corporation
 P.O. Box 176
 Hannibal, Ohio 43931

As to the State:

Kay Gossett
 OEPA Project Coordinator
 Ohio Environmental Protection Agency
 Southeast District Office
 2195 Front Street
 Logan, Ohio 43138-9031

XXVIII. EFFECTIVE DATE

98. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

99. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

XXX. APPENDICES

100. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the land use restrictions that will bind present and future owners of the Site.

XXXI. COMMUNITY RELATIONS

101. Settling Defendant shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendant shall participate in the preparation of such information for dissemination to the public and

in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXII. MODIFICATION

102. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendant after an opportunity for review and comment by the State. All such modifications shall be made in writing.

103. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendant, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendant.

104. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

105. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding

the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

106. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

107. The undersigned representative of Settling Defendant and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

108. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

109. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept

service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 19__.

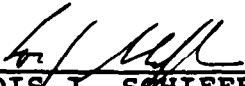
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Ormet Primary Aluminum Corporation, relating to the Ormet Corporation Superfund Site.

FOR THE UNITED STATES OF AMERICA


Date:

Sept 27, 1995


LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date:

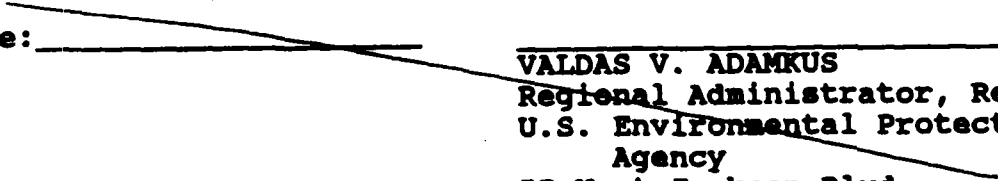
9/27/95


LESLIE LEHNERT
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date:

Assistant United States Attorney
Southern District of Ohio
U.S. Department of Justice

Date:


VALDAS V. ADAMKUS
Regional Administrator, Region V
U.S. Environmental Protection
Agency
77 West Jackson Blvd.
Chicago, IL 60604-3590

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Ormet Primary Aluminum Corporation, relating to the Ormet Corporation Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

LESLIE LEHNERT
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

Assistant United States Attorney
Southern District of Ohio
U.S. Department of Justice

Date: 9/12/95

David A. Adamkus
VALDAS V. ADAMKUS
Regional Administrator, Region V
U.S. Environmental Protection
Agency
77 West Jackson Blvd.
Chicago, IL 60604-3590

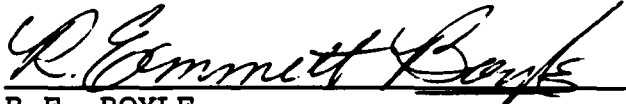
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Ormet Primary Aluminum Corporation, No. _____ (S.D. Ohio) relating to the Ormet Superfund Site.

FOR THE DEFENDANT

Date: August 29, 1995

Ormet Primary Aluminum Corporation
P.O. Box 176
State Route 7
Hannibal, Ohio 43931
(614) 483-1381

BY:


R.E. BOYLE
Chairman, President and
Chief Executive Officer

If different from above, the following is the name and address of Settling Defendant's agent for service and, if Settling Defendant has counsel, the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Richard S. Wiedman
Eckert Seamans Cherin & Mellott
600 Grant Street
Pittsburgh, PA 15219

Attorney

Richard S. Wiedman
Eckert Seamans Cherin & Mellott
600 Grant Street
Pittsburgh, PA 15219

Settling Defendant shall notify the United States Department of Justice and U.S. EPA of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.

APPENDIX A

Record of Decision

APPENDIX B

Statement of Work

**STATEMENT OF WORK FOR
THE REMEDIAL DESIGN AND REMEDIAL ACTION
AT THE
ORMET CORPORATION SITE, MONROE COUNTY, OHIO**

I. PURPOSE

The purpose of this Statement of Work (SOW) is to set forth requirements for implementation of the Remedial Action set forth in the Record of Decision (ROD), which was signed by the Regional Administrator of U.S. EPA Region V on September 12, 1994, for the Ormet Corporation Site (Site). The Settling Defendant shall follow the ROD, the SOW, the approved Remedial Design Work Plan, U.S. EPA Superfund Remedial Design and Remedial Action Guidance and any additional guidance provided by U.S. EPA in submitting deliverables for designing and implementing the remedial action at the Ormet Corporation Site.

II. DESCRIPTION OF THE REMEDIAL ACTION AND PERFORMANCE STANDARDS

Settling Defendant shall design and implement the Remedial Action to meet the Performance Standards and specifications set forth in the ROD and this SOW. Performance Standards shall include cleanup standards, standards of control, quality criteria and other substantive requirements, criteria or limitations including all Applicable or Relevant and Appropriate Requirements (ARARs) set forth in the ROD, SOW and/or Consent Decree.

1. Site Security

The Settling Defendant shall install and maintain a fence at the Site to prevent access and vandalism to the Site. Fencing of the Site shall consist of installation of a chain link fence a minimum of 6 feet high topped with three strands of barbed wire. The fence shall, at a minimum, fully encompass all source and/or disposal areas including the former disposal ponds (with the exception of FDPs 1 and 2 which are contained within the existing plant fence), and the riverbank of the Ohio River adjacent to the source and/or disposal areas, and shall be kept locked at all times except for authorized ingress and egress. The area to be fenced is shown in Figure 1. The Settling Defendant shall conduct regular inspection of the fence to ensure its integrity is maintained. The Settling Defendant shall repair any breaks in the fence within 24 hours of their identification, if possible, but in any event as soon as practicable. The Settling Defendant shall post warning signs at 200-foot intervals along the fence and at all gates. The warning signs shall advise that the area is hazardous due to chemicals in the soils and sediments through direct contact with the soils and sediments. The signs shall also provide a telephone number to call for further information. The Settling Defendant shall install the fence following completion of on-site construction activities for the Construction Materials Scrap Dump (CMSD) and the CMSD seeps,

and following excavation activities in the Carbon Run Off and Deposition Area (CRDA) and the Backwater Area sediments.

2. Restrictive Covenants/Deed Restrictions

Within 15 days after the entry of this Consent Decree, the Settling Defendant shall execute and record with the Monroe County recorder the restrictive covenants in Appendix D of the Consent Decree, in accordance with the provisions in Paragraph V(9)(b) of the Consent Decree.

3. Pre-Design Studies

- A. The Settling Defendant shall design a limited soil sampling program for PCBs in the area between the western slope of the CMSD and the 004 Outfall, and for the sediments in the Backwater Area. The sampling plan will be approved by U.S. EPA as part of the Remedial Design (RD) Work Plan, and sampling will take place within 2 weeks following approval of the RD Work Plan. Settling Defendant shall excavate soils on the western slope of the CMSD contaminated with PCBs to the same extent as soils excavated in the CRDA, as described in Section II (5)(B) of this SOW. An estimation of the volume of contaminated soils and sediments shall be provided with the 30% design submission.
- B. In order for U.S. EPA to determine a final cleanup standard for manganese in groundwater, the Settling Defendant shall perform a statistical analysis of background levels for manganese in groundwater. The analysis shall be conducted based on data from wells not affected by the contaminant plume identified in the RI report. The data points to be used will be approved by U.S. EPA as part of the RD Work Plan. Statistical analysis shall be completed in time to be submitted as part of the 30% design submission, from which U.S. EPA shall set the final cleanup standard.

Settling Defendant may, perform a statistical analysis of background levels for arsenic in groundwater. The analysis shall be conducted based on data from wells not affected by the contaminant plume identified in the RI report. The data points to be used will be approved by U.S. EPA as part of the RD Work Plan. In addition, Settling Defendant shall present a re-calculation of residual carcinogenic risk based on a residential exposure scenario for exposure to groundwater containing arsenic at higher background levels. Statistical analysis and risk calculations shall be completed in time to be submitted as part of the 30% design submission, from which U.S. EPA will determine whether or not the

cleanup standard for arsenic in groundwater in the ROD should be amended.

- C. The Settling Defendant shall examine contaminant distribution trends in groundwater and aquifer materials to assess restoration progress. Performance measures shall include contaminant mass removal rates and contaminant mass-in-place trends. A determination of dissolved contaminant mass-in-place is necessary to apply these criteria. The Settling Defendant shall estimate the dissolved contaminant mass-in-place for the groundwater plume, as a baseline for measuring the rate of contaminant mass removed by aquifer pumping (mass/year), the rate of reduction of contaminant mass-in-place (mass/year), and the rate of reduction of the volume of aquifer contaminated above Performance Standards (volume/year). Recent groundwater sampling data points and parameters shall be submitted to U.S. EPA for approval for use in the mass-in-place estimates. The final estimates shall be submitted as part of the 30% design submission.

4.

A. Groundwater Restoration System

The Settling Defendant shall maintain the continued operation of the two existing extraction wells for contaminant capture to achieve groundwater Performance Standards, and shall maintain the continued operation of the Ormet Ranney well to ensure that contaminants in the groundwater plume will not migrate in the subsurface to the Ohio River. The Settling Defendant shall operate the groundwater extraction system until the groundwater Performance Standards are met throughout the contaminated plume and at the downgradient points of compliance, as defined in this SOW. These groundwater Performance Standards are shown in Table 1, with the exception of the Performance Standard for manganese, which will be determined as described in paragraph 3(B) of this SOW. If additional compounds are found to be above MCLs or Health based standards as identified in the ROD during any monitoring event, those compounds shall be added to Table 1 as groundwater Performance Standards.

The Settling Defendant shall pump the extracted groundwater from the two existing extraction wells to the existing groundwater treatment system for removal of chemicals to meet the discharge standards set forth in the Settling Defendant's National Pollution Discharge Elimination System (NPDES) permit issued by the State of Ohio, prior to discharge to the Ohio River. The groundwater treatment process shall include the following steps:

- (1). Extract the contaminated ground water using the two existing extraction wells, ensuring plume capture by operation of the Ormet Ranney well.
- (2). Treat extracted well water by precipitation with lime and ferrous salts followed by gravity clarification.
- (3). Discharge treated ground water to the Ohio River in compliance with Ormet's NPDES permit.
- (4). Properly dispose of the treatment residuals, such as filter cake from the dewatering of clarifier sludge, off-site in a Resource Conservation and Recovery Act (RCRA) permitted landfill.

Treatment of effluent from the Ormet Ranney well is not required because it is not impacted by the groundwater contaminant plume, and is protected by the two extraction wells. The Settling Defendant shall continue to operate the Ormet Ranney well to ensure capture of the contaminant plume by the extraction wells. The Settling Defendant shall monitor the groundwater treatment system's performance on an annual basis. Settling Defendant shall operate the existing groundwater treatment system as necessary to meet NPDES permit limits.

The Settling Defendant may petition U.S. EPA to terminate the groundwater extraction system after a demonstration that the groundwater Performance Standards have been met throughout the entire contaminated plume and downgradient points of compliance. The demonstration shall consist of three years of consecutive monitoring during which none of the contaminants exceeds any standard in any of the wells identified as compliance points (as defined in Section II (6) of this SOW) in the monitoring network. Upon U.S. EPA's approval of the petition, the Settling Defendant may terminate the groundwater extraction system. Review of the petition shall be in accordance with paragraph 45 of the Consent Decree.

After termination of the operation of the groundwater extraction system, the Settling Defendant shall reactivate the groundwater extraction system immediately, if any groundwater monitoring indicates that the groundwater Performance Standards are exceeded at any point of compliance. Petition for termination following reactivation of the groundwater extraction system shall follow procedures outlined in this section.

B. CMSD Seeps

The Settling Defendant shall design and install gravel filled

collection trenches wherein seep water shall flow to a sump and be pumped from the sump to an oil/water separator. The effluent from the oil/water separator shall be routed to a carbon adsorption treatment system to remove PCBs and any other organic contaminants. If effluent from the carbon adsorption treatment system contains other contaminants that do not meet the standards set in the NPDES permit, the effluent shall be routed to the existing groundwater treatment system prior to discharge to the Ohio River. If effluent from the carbon adsorption treatment system meets NPDES permit requirements, Settling Defendant shall discharge the effluent directly to the Ohio River.

Spent carbon from the carbon filters and oil and organic materials from the oil/water separator shall be characterized and disposed of in accordance with applicable laws and regulations. Settling Defendant shall dispose of the spent carbon and oil and organic materials in accordance with all applicable laws.

Soils excavated to install the CMSD seep trenches shall be temporarily bulk stored in piles not to exceed 30 cubic yards total capacity. The excavated soils in bulk piles shall be analyzed for PCBs, and those soils whose composite sample results exceeds 50 ppm total PCBs shall be disposed of off-site at an EPA-approved Toxic Substances Control Act (TSCA) facility. Soils of less than 50 ppm total PCBs shall be solidified, if necessary, in the same manner as the backwater area sediments with less than 50 ppm total PCBs, as set forth in Section II (5)(C) of this SOW, and consolidated within the CMSD prior to installation of the CMSD cap.

C. Former Spent Potliner Storage Area (FSPSA)

The Settling Defendant shall treat surface and subsurface contamination in the FSPSA by in-situ soil flushing. The area to be addressed shall be established during design. Settling Defendant shall perform a qualitative assessment of soil sampling results from the RI, RI groundwater monitoring results, a review of aerial photographs, and visual observations of stressed vegetation during design in order to delineate the area requiring treatment. Settling Defendant shall design a soil flushing system to treat soils in the delineated area. Water, or another appropriate flushing fluid, shall be sprayed or infiltrated through the soils. A vegetative cover shall be installed over the area to be treated. Settling Defendant shall design the vegetative cover for the FSPSA soils delineated for treatment by soil flushing. Contaminants will be flushed to groundwater for ultimate capture and treatment.

- (1) The Settling Defendant shall conduct a bench-scale

treatability study on soils from the FSPSA. Analysis shall be conducted on the treated soils for all contaminants listed as Performance Standards for groundwater in Table 1, and for carcinogenic polynuclear aromatic hydrocarbons (CPAHs). Settling Defendant shall submit the plan for the treatability study for U.S. EPA approval as part of the RD Work Plan. Settling Defendant shall present the results of the treatability study with the 30% Design submittal. The Settling Defendant shall use CPAH results to calculate residual risk levels based on direct contact under a construction worker industrial exposure scenario. The Settling Defendant shall perform the residual risk analysis for the FSPSA soils in accordance with the Risk Assessment Guidance for Superfund (EPA, 1989). The Settling Defendant shall provide the results of the residual risk assessment in report format for U.S. EPA review and approval with the 30% Design submittal.

- (2) The U.S. EPA shall review the results of the bench-scale treatability study in order to develop site specific soil clean-up standards for the groundwater contaminants of concern listed in Table 1. Once the soil clean-up standards are established by U.S. EPA they shall be incorporated into the ROD for the Site.
- (3) The Settling Defendant shall submit, for U.S. EPA approval, a proposed monitoring program as part of the FSPSA soil flushing design which specifies the method and criteria to be used for verification of soil cleanup for contaminants of concern listed in Table 1. Groundwater quality monitoring shall be conducted in accordance with Section II (6) of this SOW.
- (4) Treatment of the FSPSA soils may cease when soil clean-up standards are achieved, as demonstrated by sampling and analysis of soils (in accordance with U.S. EPA-approved methods) in the FSPSA for the contaminants listed in Table 1, and when all compliance points for groundwater cleanup levels in and downgradient of the FSPSA achieve groundwater cleanup levels for three consecutive monitoring events as defined in Section II (6) of this SOW. If groundwater cleanup levels have been achieved in downgradient monitoring wells for 3 consecutive groundwater monitoring events, but soil cleanup levels have not been achieved, Settling Defendant may petition U.S. EPA to terminate Soil Flushing in the FSPSA.

5.

A. CMSD Cover

The Settling Defendant shall re-contour the Construction Material Scrap Dump (CMSD) to remove as much waste as possible from below the 100-year flood level, consistent with the remedy implemented at the CMSD. The Settling Defendant shall install over the CMSD a cap that meets the substantive requirements of RCRA Subtitle C (40 CFR Part 264, Subpart N) landfill closure, including requirements for post-closure care. At a minimum, the cap shall include the following components:

- A vegetated soil layer of sufficient thickness that the clay layer is below the frost line;
- A sand drainage layer, or synthetic equivalent of sufficient thickness to maintain within said layer the maximum projected amount of hydraulic head buildup over the synthetic membrane;
- 40 mil low-density polyethylene flexible membrane liner, or equivalent;
- Two-foot thick engineered clay layer, or synthetic equivalent;
- Soil necessary to achieve slope requirements;
- Controls that will prevent erosion in the event of a 100-year flood.

The Settling Defendant shall utilize the following publications when designing the cover for the CMSD:

- Design and Construction of RCRA/CERCLA Final Covers (U.S. EPA, 1991);
- Requirements for Hazardous Waste Landfill Design, Construction, and Closure (U.S. EPA, 1989).

If the Settling Defendant demonstrates during design that compliance with the requirements of OAC 3745-57-10 along the portion of the CMSD which abuts the Ohio River is technically impracticable from an engineering perspective, Settling Defendant may petition U.S. EPA for a waiver of the applicable requirements of the regulation for that area of the CMSD, as provided for in Paragraph 13(b) of the Consent Decree.

The Settling Defendant shall remove the Conduit located to the north of the CMSD which discharges directly to the Ohio River.

B. Carbon Run-off and Deposition Area (CRDA)

The Settling Defendant shall excavate the CRDA down to native soil in the general area shown in Figure 3.

Excavation shall continue until the remaining soils in the CRDA meet the sediment clean-up standards established in the ROD, as determined through verification sampling.:

- Total PCBs 1.0 ppm;
- Total CPAHs 60.0 ppm;

If the Settling Defendant can demonstrate during design that the run-off from the CRDA is not impacting sediments in the backwater area, Settling Defendant may petition U.S. EPA for an amended clean-up standard for PCBs based on industrial land use scenarios. U.S. EPA would then consider proposing such amended cleanup standard be incorporated into the ROD through issuance of a ROD amendment.

The Settling Defendant shall temporarily store the excavated soils in piles not to exceed 30 cubic yards total capacity. Composite samples of the excavated soils shall be analyzed for PCBs. Soils in any bulk pile whose composite sample result exceeds 50 ppm total PCBs shall be disposed of off-site in an EPA-approved TSCA disposal facility. Soils below 50 ppm total PCBs shall be consolidated within the CMSD prior to installation of the CMSD cap.

If necessary to accomplish the Remedial Action in the backwater area, Settling Defendant shall re-route the 004 outfall stream through the CRDA, or other appropriate area of the property, to bypass the backwater area and discharge directly to the Ohio River. The U.S. EPA shall approve the new route for the 004 outfall stream as part of the RD Work Plan.

Upon completion of soil excavation and re-routing of the 004 outfall, the Settling Defendant shall re-grade with clean soil and re-vegetate the excavated CRDA and the former 004 outfall. Settling Defendant shall install controls sufficient to prevent continued run-off from the plant area to the CRDA.

C. Backwater Area Sediments

The Settling Defendant shall temporarily isolate the backwater area at the ~~CRDA~~ intersection with the Ohio River by sheet piling or another appropriate method to be approved by U.S. EPA in the RD Work Plan. The Settling Defendant shall excavate sediments in the backwater area shown to contain PCBs above the cleanup standard during pre-design sampling and analysis, and temporarily bulk-store the ~~excavated~~ sediments in piles not to exceed 30 cubic yards total capacity. Excavation shall continue

until none of the remaining backwater area sediments exceed the cleanup standards set in the ROD, as determined through verification sampling:

- Total CPAHs 60.0 ppm
- Total PCBs 1.0 ppm

The Settling Defendant shall select a dredging method, subject to U.S. EPA approval, which shall minimize resuspension, remove as much contaminated sediment as possible, and also limit air emissions of PCBs as much as possible. Dredging shall be considered complete when sampling over the full area of the backwater indicates compliance with the standards. The point of compliance shall be the boundary of the backwater area, as delineated by the location of the temporary barrier that will be installed prior to dredging of the sediments. The media to be sampled shall be surface water and sediments.

Composite samples from each bulk pile of excavated sediments shall be analyzed for PCBs. Sediments in any bulk pile whose composite sample exceeds 50 ppm total PCBs shall be disposed of off-site in an EPA-approved TSCA disposal facility. Sediments between 1 ppm and 50 ppm shall undergo solidification as necessary, and then shall be consolidated within the CMSD prior to installation of the CMSD cap. Settling Defendant shall submit an appropriate solidification method for the backwater area sediments for U.S. EPA approval.

6. Points of Compliance

In order to monitor and evaluate the remedial actions throughout the Site, certain locations at which there are groundwater monitoring wells shall be selected by U.S. EPA as groundwater points of compliance. Wells designated as representing the Points of Compliance, and which shall be sampled by the Settling Defendant, will be selected by U.S. EPA during remedial design.

The U.S. EPA shall select the specific groundwater monitoring locations during the remedial design. U.S. EPA shall select groundwater monitoring locations designed to monitor the containment of contaminants within the CMSD during design. The compliance monitoring locations shall include, but are not limited to, existing monitoring wells located adjacent to and downgradient of the CMSD.

The U.S. EPA shall select the final groundwater monitoring locations for the FSPSA, in and immediately downgradient of the FSPSA, including, but not limited to, existing monitoring

wells. The Settling Defendant shall begin water quality monitoring at the rate of three times per year starting no later than 4 months after U.S. EPA approval of the final groundwater monitoring locations. U.S. EPA may consider changes in the frequency of groundwater monitoring based on information collected during earlier monitoring events. Parameters to be monitored shall be determined during remedial design, and shall include, but are not limited to, volatile organic compounds, metals, cyanide and fluoride.

The Settling Defendant shall monitor the hydraulic containment of the existing extraction wells and the Ormet Ranney well at the same intervals required for water quality monitoring. The Settling Defendant shall monitor, containment performance, among other items, by measuring hydraulic heads and determining gradients, determining groundwater flow directions, and measuring pumping rates. Upon initiation of soil flushing at the FSPSA, as set forth in Section II (4)(C) of this SOW, the Settling Defendant shall monitor the hydraulic containment of the existing extraction wells and the Ormet Ranney well at 1 week intervals for the first 2 months of soil flushing operations to ensure groundwater containment is maintained. If weekly monitoring shows containment is maintained, hydraulic containment monitoring shall return to intervals for water quality monitoring.

The Settling Defendant shall repair or replace each monitoring well if it is destroyed or in any way becomes unusable.

III. SCOPE OF REMEDIAL DESIGN AND REMEDIAL ACTION

The Remedial Design/Remedial Action shall consist of 5 tasks. All plans are subject to EPA approval.

Task 1: RD Work Plan

Task 2: Remedial Design Phases

- A. Preliminary Design
- B. Intermediate Design
- C. Prefinal Design/ Final Design

Task 3: Remedial Action/Construction

- A. Preconstruction Meeting
- B. Prefinal Inspection
- C. Final Inspection
- D. Reports
 - 1. Final Construction Report
 - 2. Completion of Remedial Action Report

Task 4: Operation and Maintenance

Task 5: Monitoring

Task 1: Remedial Design Work Plan

The Settling Defendant shall submit a Work Plan which shall document the overall management strategy for performing the design, construction, operation, maintenance and monitoring of Remedial Actions for U.S. EPA review and approval. The Work Plan shall contain plans and schedules for implementation of all remedial design and pre-design tasks, including, but not limited to:

- (1) pre-design studies, as set forth in Section II (3) of this SOW;
- (2) a pre-design Sampling and Analysis Plan (SAP) (including a pre-design Quality Assurance Project Plan pre-design QAPP));
- (3) plans and schedules for delineation of the extent of PCB contamination in soils located between the CMSD and the 004 outfall, and sediments in the backwater area, as set forth in Section II 3(A) of this SOW;
- (4) plans for estimation of the contaminant mass-in-place for the groundwater contaminant plume, as set forth in Section II 3(C) of this SOW; and
- (5) plans and schedules for implementing treatability studies for the CMSD Seeps and the FSPSA soils; and

The Work Plan shall document the responsibility and authority of all organizations and key personnel involved with the RD implementation and shall include a description of qualifications of key personnel directing the Remedial Design, including contractor personnel. The Work Plan shall also contain a schedule of Remedial Design deliverables and activities. The Settling Defendant shall submit a Remedial Design Work Plan in accordance with § XII and paragraph 11 of the Consent Decree and Section V of this SOW.

The Settling Defendant shall implement the pre-design work in accordance with the final RD Work Plan. The results of the pre-design studies shall be included with the 30% design.

Task 2: Remedial Design Phases

Settling Defendant shall prepare construction plans and specifications to implement the Remedial Actions at the Site as described in the ROD and this SOW. Plans and specifications shall be submitted in accordance with the

schedule set forth in Section V below. Subject to approval by U.S. EPA, Settling Defendant may submit more than one set of design submittals reflecting different components of the Remedial Action. All plans and specifications shall be developed in accordance with U.S. EPA's Superfund Remedial Design and Remedial Action Guidance (OSWER Directive No. 9355.0-4A) and shall demonstrate that the Remedial Action shall meet all objectives of the ROD, the CD and this SOW, including all Performance Standards. The Settling Defendant shall meet regularly with U.S. EPA to discuss design issues.

A. Preliminary Design

The Settling Defendant shall submit the Preliminary Design when the design effort is approximately 30 % complete. The Preliminary Design submittal shall include or discuss, at a minimum, the following:

- Preliminary plans, drawings, and sketches, including design calculations;
- Results of the pre-design studies;
- Results of treatability studies for the CMSD seeps and FSPSA soils, and additional field sampling;
- Design assumptions and parameters, including design restrictions, process criteria, appropriate unit processes for the treatment train, and expected removal or treatment efficiencies for both the process and waste (concentration and volume);
- Proposed cleanup verification methods, including compliance with Applicable or Relevant and Appropriate Requirements (ARARs);
- Outline of required specifications;
- Proposed sighting/locations of processes/construction activity;
- Expected long-term monitoring and operation requirements;
- Real estate, easement, and permit requirements; and
- Preliminary construction schedule, including contracting strategy.

B. Intermediate Design

The Settling Defendant shall submit the Intermediate Design

when the design effort is approximately 60 % complete. The Intermediate Design shall fully address all comments made to the preceding design submittal. The Intermediate Design submittal shall include those elements listed for the Preliminary Design as well as the following:

- Draft Performance Standard Verification Plan;
- Draft Construction Quality Assurance Plan;
- Draft QAPP/Draft Health and Safety Plan/Draft Field Sampling Plan/Draft Contingency Plan;

C. Prefinal and Final Designs

The Settling Defendant shall submit the Prefinal Design when the design effort is 95% complete and shall submit the Final Design when the design effort is 100% complete. The Prefinal Design shall fully address all comments made to the preceding design submittal. The Final Design shall fully address all comments made to the Prefinal Design and shall include reproducible drawings and specifications suitable for bid advertisement. The Prefinal Design shall serve as the Final Design if U.S. EPA has no further comments and issues the notice to proceed.

The Prefinal and Final Design submittals shall include those elements listed for the Preliminary Design, as well as, the following:

- Final Performance Standard Verification Plan;
- Final Construction Quality Assurance Plan;
- Final QAPP/Final H & S Plan/Final FSP;
- Draft Operation and Maintenance Plan;
- Capital and Operation and Maintenance Cost Estimate. This cost estimate shall refine the FS cost estimate to reflect the detail presented in the Final Design;
- Final Project Schedule for the construction and implementation of the Remedial Action which identifies timing for initiation and completion of all critical path tasks. The final project schedule submitted as part of the Final Design shall include specific dates for completion of the project and major milestones.

Task 3: Remedial Action Construction

The Settling Defendant shall implement the Remedial Action as detailed in the approved Final Design. The following activities shall be completed in constructing the Remedial Action.

A. Preconstruction inspection and meeting:

The Settling Defendant shall participate with the U.S. EPA in a preconstruction inspection and meeting to:

- a. Review methods for documenting and reporting inspection data;
- b. Review methods for distributing and storing documents and reports;
- c. Review work area security and safety protocol;
- d. Discuss any appropriate modifications of the construction quality assurance plan to ensure that site-specific considerations are addressed; and,
- e. Conduct a Site walk-around to verify that the design criteria, plans, and specifications are understood and to review material and equipment storage locations.

The preconstruction inspection and meeting shall be documented by a designated person and minutes shall be transmitted to all parties.

B. Prefinal inspection:

Within 30 days after the Settling Defendant makes the preliminary determination that construction is complete, the Settling Defendant shall notify U.S. EPA and the State for the purposes of conducting a prefinal inspection. The prefinal inspection shall consist of a walk-through inspection of the entire Site with U.S. EPA. The inspection is to determine whether the project is complete and consistent with the contract documents and the Remedial Action. Any outstanding construction items discovered during the inspection shall be identified and noted. Additionally, treatment equipment shall be operationally tested by the Settling Defendant. The Settling Defendant shall certify that the equipment has performed to meet the purpose and intent of the specifications. The Settling Defendant shall perform retesting where deficiencies are revealed. The Settling Defendant shall prepare a prefinal inspection report 30 days after completion of the prefinal inspection. The prefinal inspection report shall outline the outstanding construction items, actions required to resolve items, completion date for these items, and a proposed date for final inspection.

C. Final inspection:

Within 30 days after completion of all work identified in the prefinal inspection report, the Settling Defendant shall notify U.S. EPA and the State for the purposes of conducting a final inspection. The final inspection shall consist of a walk-through inspection of the Site by U.S. EPA and the Settling Defendant. The prefinal inspection report shall be used as a checklist, with the final inspection focusing on the outstanding construction items identified in the prefinal inspection. During the final inspection, the Settling Defendant shall confirm that all outstanding items have been resolved.

D. Reports

1. Construction Completion Report

Within 60 days of a U.S. EPA approved final inspection, Settling Defendant shall submit a Construction Completion Report. In the report, a registered professional engineer and the Settling Defendant's Project Coordinator shall state that the Remedial Action has been constructed in accordance with the design and specifications. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. Remedial Action Completion Report

Within 90 days following attainment of all groundwater Performance Standards, as set forth in this SOW, and soil cleanup standards for the FSPSA, as set forth in this SOW, the Settling Defendant shall conduct a pre-certification inspection to be attended by EPA. Within 30 days of a U.S. EPA approved pre-certification inspection the Settling Defendant shall prepare a Completion of Remedial Action report. The Settling Defendant's Project Coordinator shall state the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the sampling and analysis results required to demonstrate that cleanup standards have been attained for groundwater and for soils in the FSPSA.

Task 4: Operation and Maintenance

The Settling Defendant shall prepare an Operation and Maintenance (O&M) Plan to cover both implementation and long term maintenance of the Remedial Actions. The Settling Defendant shall submit a Draft O&M Plan as part of the Final Design submittal. The Settling Defendant shall submit a Final O&M Plan prior to the pre-final construction inspection, in accordance with the approved construction schedule. The plan shall be composed of the following elements:

1. Description of normal operation and maintenance ;
 - a. Description of tasks for operation;
 - b. Description of tasks for maintenance;
 - c. Description of prescribed treatment or operation conditions; and
 - d. Schedule showing frequency of each O&M task.
2. Description of potential operating problems;
 - a. Description and analysis of potential operation problems;
 - b. Sources of information regarding problems; and
 - c. Common and/or anticipated remedies.
3. Description of routine monitoring and laboratory testing;
 - a. Description of monitoring tasks;
 - b. Description of required data collection, laboratory tests and their interpretation;
 - c. Required quality assurance, and quality control ;
 - d. Schedule of monitoring frequency and procedures for a petition to U.S. EPA to reduce the frequency of or discontinue monitoring; and
 - e. Description of verification sampling procedures if Cleanup or Performance Standards are exceeded in routine monitoring.
4. Description of alternate O&M;
 - a. Should systems fail, alternate procedures to prevent release or threatened releases of hazardous substances, pollutants or contaminants which may endanger public health and the environment or exceed Performance Standards; and
 - b. Analysis of vulnerability and additional resource requirement should a failure occur.
5. Corrective Action;
 - a. Description of corrective action to be implemented

- in the event that cleanup or Performance Standards are exceeded; and
 - b. Schedule for implementing these corrective actions.
- 6. Safety plan;
 - a. Description of precautions, of necessary equipment, etc., for Site personnel; and
 - b. Safety tasks required in event of systems failure.
- 7. Description of equipment; and
 - a. Equipment identification;
 - b. Installation of monitoring components;
 - c. Maintenance of Site equipment; and
 - d. Replacement schedule for equipment and installed components.
- 8. Records and reporting mechanisms required.
 - a. Daily operating logs;
 - b. Laboratory records;
 - c. Records for operating costs;
 - d. Mechanism for reporting emergencies;
 - e. Personnel and maintenance records; and
 - f. Monthly/annual reports to State agencies.

Task 5: Performance Monitoring

Performance monitoring shall be conducted to ensure that all Performance Standards are met.

A. Performance Standard Verification Plan

The Settling Defendant shall prepare a Performance Standard Verification Plan. The purpose of the Performance Standard Verification Plan is to provide a mechanism to ensure that both short-term and long-term Performance Standards for the Remedial Action are met. The Settling Defendant shall submit a Draft Performance Standards Verification Plan with the Intermediate Design. Settling Defendant shall submit a Final Performance Standard Verification Plan with the Final Design submittal. Once approved by U.S. EPA, the Performance Standards Verification Plan shall be implemented on the approved schedule. The Performance Standards Verification Plan shall include:

- 1. Quality Assurance Project Plan
- 2. Health and Safety Plan
- 3. Field Sampling Plan

IV CONTENT OF SUPPORTING PLANS

The documents listed in this section -- the Quality Assurance Project Plan, the Field Sampling Plan, the Health and Safety Plan, the Contingency Plan and the Construction Quality Assurance Plan -- are documents which must be prepared and submitted as outlined in Section III of this SOW. The following section describes the required contents of each of these supporting plans.

A. Quality Assurance Project Plan

The Settling Defendant shall develop a Site specific Quality Assurance Project Plan (QAPP), covering sample analysis and data handling for samples collected in all phases of future Site work, based upon the Consent Decree and guidance provided by U.S. EPA. The QAPP shall be consistent with the requirements of the EPA Contract Lab Program (CLP) for laboratories proposed outside the CLP. The QAPP shall at a minimum include:

Project Description

- * Facility Location History
- * Past Data Collection Activity
- * Project Scope
- * Sample Network Design
- * Parameters to be Tested and Frequency
- * Project Schedule

Project Organization and Responsibility

Quality Assurance Objective for Measurement Data

- * Level of Quality Control Effort
- * Accuracy, Precision and Sensitivity of Analysis
- * Completeness, Representativeness and Comparability

Sampling Procedures

Sample Custody

- * Field Specific Custody Procedures
- * Laboratory Chain of Custody Procedures

Calibration Procedures and Frequency

- * Field Instruments/Equipment
- * Laboratory Instruments

Analytical Procedures

- * Non-Contract Laboratory Program
Analytical Methods
- * Field Screening and Analytical Protocol
- * Laboratory Procedures

Internal Quality Control Checks

- * Field Measurements
- * Laboratory Analysis

Data Reduction, Validation, and Reporting

- * Data Reduction
- * Data Validation
- * Data Reporting

and System Audits

- * Internal Audits of Field Activity
- * Internal Laboratory Audit
- * External Field Audit
- * External Laboratory Audit

Preventive Maintenance

- * Routine Preventative Maintenance Procedures and Schedules
- * Field Instruments/Equipment
- * Laboratory Instruments

Specific Routine Procedures to Assess Data Precision, Accuracy, and Completeness

- * Field Measurement Data
- * Laboratory Data

Corrective Action

- * Sample Collection/Field Measurement
- * Laboratory Analysis

Quality Assurance Reports to Management

The Settling Defendant shall attend a pre- QAPP meeting with U.S. EPA. The Settling Defendant shall submit a draft QAPP to U.S. EPA for review and approval.

B. Health and Safety Plan

The Settling Defendant shall develop a health and safety plan which is designed to protect on-site personnel and area residents from physical, chemical and all other hazards posed by this remedial action. The Health and Safety plan shall develop the levels and criteria necessary to address the following areas.

Facility Description

Personnel

Levels of protection

Safe work practices and safe guards

Medical surveillance

Personal and environmental air monitoring

Personal protective equipment
Personal hygiene
Decontamination - personal and equipment
Site work zones
Contaminant control
Contingency and emergency planning
Logs, reports and record keeping

The Health and Safety plan shall follow U.S. EPA guidance and all OSHA requirements as outlined in 29 CFR 1910 and 1926.

Contingency Plan [Stand alone or in H & S]

Settling Defendant shall submit a Contingency Plan describing procedures to be used in the event of an accident or emergency at the site. The Settling Defendant shall submit the draft Contingency Plan with the prefinal design as part of the Health and Safety Plan and the final Contingency Plan shall be submitted with the final design. The Contingency Plan shall include, at a minimum, the following:

1. Name of the person or entity responsible for responding in the event of an emergency incident.
2. Plan and date(s) for meeting(s) with the local community, including local, State and Federal agencies involved in the cleanup, as well as local emergency squads and hospitals.
3. First aid medical information.
4. Air Monitoring Plan (if applicable).
5. Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), as specified in 40 CFR Part 109 describing measures to prevent and contingency plans for potential spills and discharges from materials handling and transportation.

C. Field Sampling Plan

The Settling Defendant shall develop a field sampling plan (as described in "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," October 1988). The Field Sampling Plan should supplement the QAPP and address all sample collection activities.

D. Construction Quality Assurance Plan

Settling Defendant shall submit a Construction Quality

Assurance Plan (CQAP) which describes the Site specific components of the quality assurance program which shall ensure that the completed project meets or exceeds all design criteria, plans, and specifications. The Settling Defendant shall submit the draft CQAP with the Pre-final Design and the final CQAP shall be submitted with the Final Design. The CQAP shall contain, at a minimum, the following elements:

1. Responsibilities and authorities of all organizations and key personnel involved in the design and construction of the Remedial Action.
2. Qualifications of the Quality Assurance Official to demonstrate he possesses the training and experience necessary to fulfill his identified responsibilities.
3. Protocols for sampling and testing used to monitor construction.
4. Identification of proposed quality assurance sampling activities including the sample size, locations, frequency of testing, acceptance and rejection data sheets, problem identification and corrective measures reports, evaluation reports, acceptance reports, and final documentation. A description of the provisions for final storage of all records consistent with the requirements of the Consent Decree shall be included.
5. Reporting requirements for CQA activities shall be described in detail in the CQA plan. This shall include such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, design acceptance reports, and final documentation. Provisions for the final storage of all records shall be presented in the CQA plan.
6. The Settling Defendant shall prepare the CQA plan for the CMSD in accordance with the following U.S. EPA publications:
 - Construction Quality Management for Remedial Action and Remedial Design Waste Containment Systems (U.S. EPA, 1992);
 - Quality Assurance/Quality Control for Waste Containment Facilities (U.S. EPA, 1993).

V. SUMMARY OF MAJOR DELIVERABLES/SCHEDULE

A summary of the project schedule and reporting requirements contained in this SOW is presented below:

| <u>Submission</u> | <u>Due Date</u> |
|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1. Draft RD Work Plan | Sixty (60) days after Notice of Authorization to proceed with RD |
| 2. Preliminary Design (30%) including pre-design study treatability studies | One hundred and twenty (120) days after USEPA's approval of Final RD Work Plan |
| 3. Intermediate Design (60%) | sixty (60) days after receipt of USEPA's comments on the Preliminary Design |
| 4. Prefinal Design (95%) | sixty (60) days after receipt of USEPA's comments on the Intermediate Design |
| 5. Final Design (100%) | sixty (60) days after receipt of USEPA's comments on the Prefinal Design |
| 6. Award RA Contract(s) | sixty (60) days after receipt of U.S. EPA's Notice of Authorization to Proceed with RA |
| 7. Pre-Construction Inspection and Meeting | Fifteen (15) days after Award of RA Contract(s) |
| 8. Initiate Construction of RA | Fifteen (15) days after Pre - Construction Inspection and meeting |
| 9. Completion of Construction | As approved by U.S. EPA in RA construction schedule |
| 10. Prefinal Inspection | No later than thirty (30) days after completion of construction |

- | | |
|---------------------------------------|------------------------------------------------------------------------------------------------|
| 11. Prefinal Inspection Report | Thirty (30) days after completion of prefinal inspection |
| 12. Final Inspection | Thirty (30) days after completion of work identified in prefinal inspection report |
| 13. Final O&M Plan | No later than Prefinal Inspection |
| 14. Construction Completion Report | Thirty (30) days after final inspection |
| 15. Pre-certification Inspection | Ninety (90) days following attainment of Performance Standards for Groundwater and FSPSA soils |
| 16. Remedial Action Completion Report | Thirty (30) days after the pre-certification inspection |

APPENDIX C

Site Description and Map

46.74 ACRE SURVEY DESCRIPTION FOR ORMET CORPORATION

BEGINNING AT THE SOUTH SIDE OF THE RAILROAD AND ON THE EAST SIDE OF A FENCE LINE AT A SET $\frac{1}{2}$ " ROD, THEN WITH THREE (3) LINES THROUGH THE PROPERTY OF THE ORMET CORPORATION,

N 76° 44' E, 681.28 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 26° 04' E, 209.58 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 19° 02' E, 248.42 FEET TO A $\frac{1}{2}$ " ROD SET ON THE TOP OUTSIDE EDGE OF A DIKE, THEN WITH THE TOP OUTSIDE EDGE OF THE SAME DIKE FOR TWELVE (12) LINES THROUGH THE PROPERTY OF THE ORMET CORPORATION,

S 47° 32' E, 149.76 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 45° 39' E, 186.89 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 49° 57' E, 150.99 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 48° 37' E, 169.47 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 20° 19' E, 44.05 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 23° 08' W, 46.66 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 44° 47' W, 163.30 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 47° 16' W, 198.68 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 45° 24' W, 199.41 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 48° 39' W, 198.57 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 48° 57' W, 200.17 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 77° 30' W, 63.06 FEET TO A SET $\frac{1}{2}$ " ROD, THEN WITH TWO (2) LINES THROUGH THE PROPERTY OF THE ORMET CORPORATION,

S 17° 03' W, 32.69 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

S 20° 20' E, 136.56 FEET TO A POINT AT THE NORTH WATERS EDGE OF THE OHIO RIVER (RIVER ELEVATION AT THE TIME OF SURVEY WAS 624.1 FEET), THEN WITH THE ABOVE SAID NORTH WATERS EDGE FOR TWO (2) LINES,

S 61° 10' W, 247.93 FEET TO A POINT, THEN,

S 65° 38' W, 418.33 FEET TO A POINT IN THE NORTH WATERS EDGE OF THE OHIO RIVER AT THE MOUTH OF A BACKWATER AREA, THEN WITH A LINE ACROSS THE MOUTH OF THE BACKWATER AREA,

N 89° 21' W, 154.19 FEET TO A POINT AT THE WATERS EDGE OF THE BACKWATER AND THE OHIO RIVER, THEN WITH THE WEST WATERS EDGE OF THE BACKWATER AREA,

N 22° 04' W, 77.74 FEET TO A POINT IN THE ABOVE SAID WEST WATERS ~~EDGE~~, THEN WITH THIRTEEN (13) LINES THROUGH THE PROPERTY OF THE ORMET CORPORATION,

S 62° 49' W, 297.84 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 9° 05' E, 78.90 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 24° 27' E, 66.42 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 53° 29' E, 81.89 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 26° 23' E, 99.17 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 21° 45' W, 73.83 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 15° 09' E, 62.73 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 9° 03' W, 190.62 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 89° 57' W, 141.83 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 00° 11' E, 355.67 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 89° 25' E, 485.90 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 00° 10' E, 309.33 FEET TO A SET $\frac{1}{2}$ " ROD, THEN,

N 00° 06' W, 709.68 FEET TO THE BEGINNING, CONTAINING 46.74 ACRES.

Henry M. Parsons
HENRY M. PARSONS

LAND SURVEYOR NO. 98

JULY 31, 1995

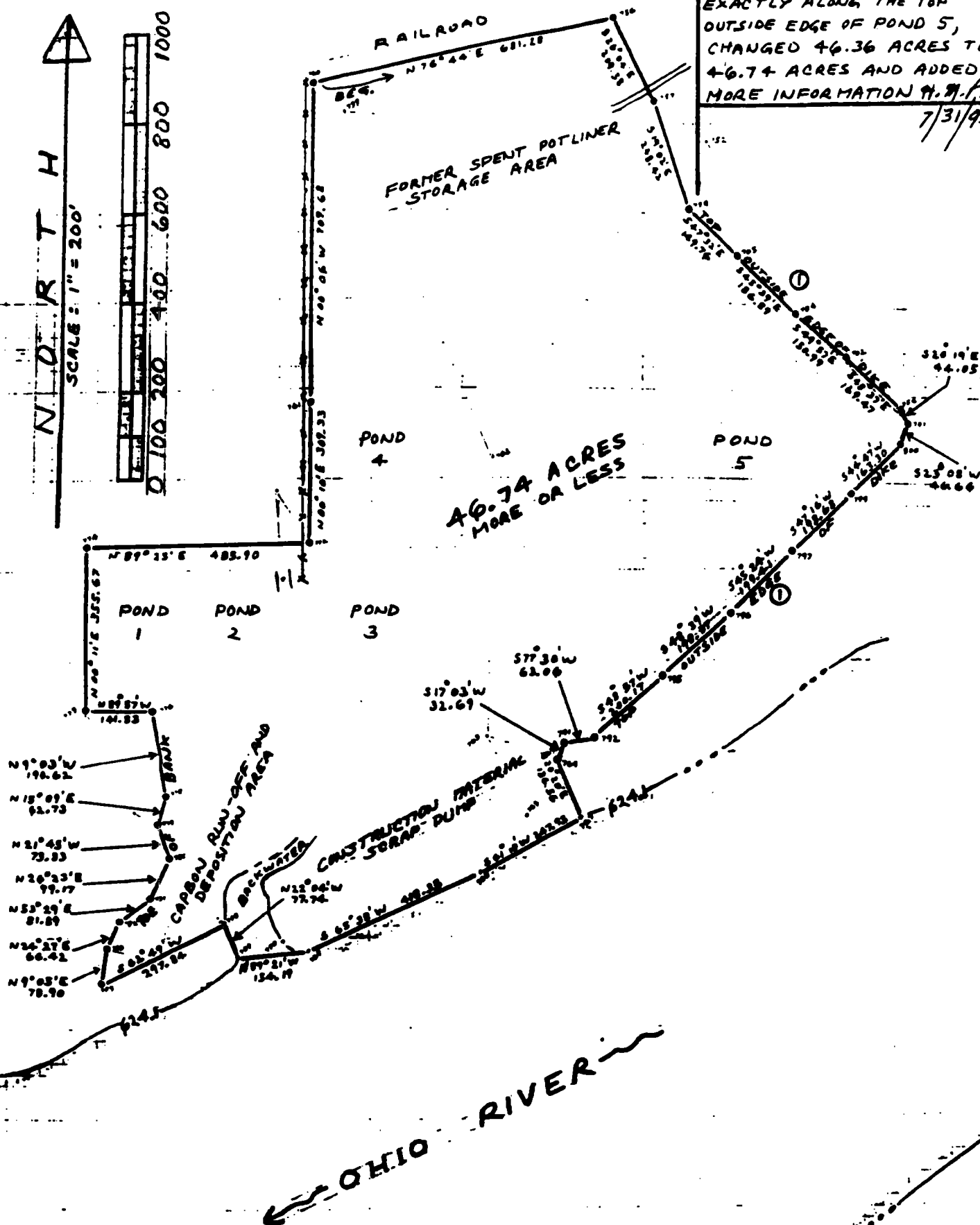
REVISION NO. 1

① CHANGED THE SURVEY TO EXACTLY ALONG THE TOP OUTSIDE EDGE OF POND 5, CHANGED 46.36 ACRES TO 46.74 ACRES AND ADDED MORE INFORMATION H. H. P.

N O R T H

SCALE: 1" = 200'

0 100 200 400 600 800 1000



SURVEY FOR THE ORMET CORPORATION

SCALE: 1" = 200' BY: DATE: JULY 24, 1995
 HENRY M. PARSONS
 LAND SURVEYOR No 98
 121 GLENVIEW DRIVE
 NEW MARTINSVILLE
 WEST VIRGINIA 26155
 PHONES: 304 - 455-3472
 304 - 455-8238

REVISION No 1

DRAWING No. 95-9179-①

APPENDIX D

Land Use Restrictions

DECLARATION OF RESTRICTION ON USE OF REAL PROPERTY

The record owner, Ormet Corporation ("Ormet"), hereby declares and imposes the following restrictions on the approximately 47 acres of real property owned by Ormet, also known as the Ormet Corporation Superfund Site (the "Site") in the City of Hannibal, Monroe County, Ohio, generally located along the Ohio River at approximately rivermile 123; and bounded on the northwest by Ohio State Route 7, on the east and southeast by the Ohio River, and on the southwest by the former Consolidated Aluminum Can (CAC) facility. The Site is more particularly described as follows:

BEGINNING AT THE SOUTH SIDE OF THE RAILROAD AND ON THE EAST SIDE OF A FENCE LINE AT A SET 1/2" ROD, THEN WITH THREE (3) LINES THROUGH THE PROPERTY OF THE ORMET CORPORATION,

N 76°44' E, 681.28 FEET TO A SET 1/2" ROD, THEN,

S 26°04' E, 209.58 FEET TO A SET 1/2" ROD, THEN,

S 19°02' E, 248.42 FEET TO A 1/2" ROD SET ON THE TOP OUTSIDE EDGE OF A DIKE, THEN WITH THE TOP OUTSIDE EDGE OF THE SAME DIKE FOR TWELVE (12) LINES THROUGH THE PROPERTY OF THE ORMET CORPORATION,

S 47°32' E, 149.76 FEET TO A SET 1/2" ROD, THEN,

S 45°39' E, 186.89 FEET TO A SET 1/2" ROD, THEN,

S 49°57' E, 150.99 FEET TO A SET 1/2" ROD, THEN,

S 48°37' E, 169.47 FEET TO A SET 1/2" ROD, THEN,

S 20°19' E, 44.05 FEET TO A SET 1/2" ROD, THEN,

S 23°08' W, 46.66 FEET TO A SET 1/2" ROD, THEN,

S 44°47' W, 163.30 FEET TO A SET 1/2" ROD, THEN,

S 47°16' W, 198.68 FEET TO A SET 1/2" ROD, THEN,

S 45°24' W, 199.41 FEET TO A SET 1/2" ROD, THEN,
S 48°39' W, 198.57 FEET TO A SET 1/2" ROD, THEN,
S 48°57' W, 200.17 FEET TO A SET 1/2" ROD, THEN,
S 77°30' W, 63.06 FEET TO A SET 1/2" ROD, THEN WITH TWO (2)
LINES THROUGH THE PROPERTY OF THE ORMET CORPORATION,
S 17°03' W, 32.69 FEET TO A SET 1/2" ROD, THEN,
S 20°20' E, 136.56 FEET TO A POINT AT THE NORTH WATERS EDGE
OF THE OHIO RIVER (RIVER ELEVATION AT THE TIME OF SURVEY WAS
624.1 FEET), THEN WITH THE ABOVE SAID NORTH WATERS EDGE FOR
TWO (2) LINES,
S 61°10' W, 247.93 FEET TO A POINT, THEN,
S 65°38' W, 418.33 FEET TO A POINT IN THE NORTH WATERS EDGE
OF THE OHIO RIVER AT THE MOUTH OF A BACKWATER AREA, THEN
WITH A LINE ACROSS THE MOUTH OF THE BACKWATER AREA,
N 89°21' W, 154.19 FEET TO A POINT AT THE WATERS EDGE OF THE
BACKWATER AND THE OHIO RIVER, THEN WITH THE WEST WATERS EDGE
OF THE BACKWATER AREA,
N 22°04' W, 77.74 FEET TO A POINT IN THE ABOVE SAID WEST
WATERS EDGE, THEN WITH THIRTEEN (13) LINES THROUGH THE
PROPERTY OF THE ORMET CORPORATION,
S 62°49' W, 297.84 FEET TO A SET 1/2" ROD, THEN,
N 9°05' E, 78.90 FEET TO A SET 1/2" ROD, THEN,
N 24°27' E, 66.42 FEET TO A SET 1/2" ROD, THEN,
N 53°29' E, 81.89 FEET TO A SET 1/2" ROD, THEN,
N 26°23' E, 99.17 FEET TO A SET 1/2" ROD, THEN,
N 21°45' W, 73.83 FEET TO A SET 1/2" ROD, THEN,
N 15°09' E, 62.73 FEET TO A SET 1/2" ROD, THEN,
N 9°03' W, 190.62 FEET TO A SET 1/2" ROD, THEN,
N 89°57' W, 141.83 FEET TO A SET 1/2" ROD, THEN,
N 00°11' E, 355.67 FEET TO A SET 1/2" ROD, THEN,
N 89°25' E, 485.90 FEET TO A SET 1/2" ROD, THEN,
N 00°10' E, 309.33 FEET TO A SET 1/2" ROD, THEN,

N 00°06' W, 709.68 FEET TO THE BEGINNING, CONTAINING 46.74 ACRES.

RECITALS

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) has issued a Record of Decision adopting a remedial action plan which requires remedial action to be undertaken at the Site and further institutional controls to assure that the remedy is protective of human health and the environment;

WHEREAS, the United States District Court for the Southern District of Ohio has approved a Consent Decree entered into between the United States of America and Ormet (in United States of America v. Ormet Primary Aluminum Corporation, Civil Action no. _____) which Consent Decree concerns the remedial actions to be undertaken at the Site. Paragraph 6 of the Consent Decree and the Statement of Work ("SOW") attached to the Decree identify institutional controls which are necessary to effectuate and protect the remedial action at the Site and to protect the public health or welfare or the environment at the Site;

NOW, THEREFORE, by this instrument there are created, declared and established at the property the following restrictive covenants and requirements, which shall, unless amended, run with the land and remain in full force and effect in perpetuity from the date hereof, irrespective of any sale, conveyance, alienation, or other transfer of any interest or estate in such property.

RESTRICTIONS APPLICABLE TO THE SITE

The following restrictions shall apply to the property described above:

1. There shall be no use of the groundwater underlying the property which might endanger human health through ingestion or dermal contact or endanger the environment. Groundwater may be pumped and used for industrial purposes.
2. There shall be no use of, or activity at, the property that may interfere with the work performed or to be performed under the Consent Decree and the SOW at the property, or any activity which may damage any remedial action component constructed for or installed pursuant to the Consent Decree and the SOW or otherwise impair the effectiveness of any work to be performed pursuant to the Consent Decree and the SOW unless prior written approval is obtained from U.S. EPA.
3. There shall be no residential use of the property.
4. There shall be no excavation, installation, construction, removal or use of any buildings, wells, pipes, roads, ditches or any other structures at the property except with the express prior written approval

of U.S. EPA as consistent with the Consent Decree and SOW.

All the restrictions specified above shall continue in full force and effect until the Site is deleted from the National Priorities List, all remedial action clean-up and performance standards have been met, and until such time as the U.S. EPA issues a determination in writing or the court rules to either modify or terminate the restrictions in response to a petition from the owner(s) of the property, as provided below.

COPY OF RESTRICTIONS

A copy of these restrictions shall be provided by the owner(s) of the property to all respective successors, assigns and transferees of the property.

PETITION TO MODIFY OR TERMINATE DEED RESTRICTIONS

After all work, as defined in the Consent Decree and SOW, has been completed and upon achievement of Cleanup Standards, consistent with the Consent Decree and SOW, the owner(s) of the property may petition the Regional Administrator of the U.S. EPA, Region V, or his delegate, to modify or terminate the deed restrictions. Any petition for modification or termination shall state the specific provision sought to be modified or terminated and any proposed additional uses of the property. Any proposed modification or terminations must not be inconsistent with the requirements set forth in the Consent Decree and SOW. The Regional Administrator may allow or deny the owner's petition for modification or termination in whole or in part. Any dispute as to the Regional Administrator's determination is subject to Section XX (Dispute Resolution) of the Consent Decree.

SEVERABILITY

If any provision of this Declaration of Restriction On Uses of Real Property is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired in full force and effect.

CONFLICT OF LAWS

If any provision of this Declaration of Restrictions On Use of Real Property is also the subject of any law or regulation established by any federal, state or local government, the stricter of the two standards shall prevail.

HARMONIOUS CONSTRUCTION

No provision of this Declaration of Restriction On Use of Real Property shall be construed so as to violate any applicable zoning laws, regulations or ordinances. If any such conflict does arise, the applicable zoning laws, regulations or ordinances shall prevail, unless they are inconsistent with CERCLA.

The undersigned persons executing this Declaration of Restrictions On Use of Real Property on behalf of the owner(s) of the property represent and certify that they are duly authorized and have been fully empowered to execute this Declaration.

IN WITNESS WHEREOF, the owner(s) of the property have caused this Declaration of Restrictions On Use of Real Property to be executed on this ____ day of _____, 1995.

ORMET PRIMARY ALUMINUM CORPORATION

BY: _____